

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

**Qwest Communications International Inc.,
Consolidated Application For Authority To
Provide In-Region, InterLATA Services In The
States Of Colorado, Idaho, Iowa, Montana,
Nebraska, North Dakota, Utah, Washington and
Wyoming**

WC Docket No. 02-314

REPLY DECLARATION OF KENNETH L. WILSON

1. My name is Kenneth L. Wilson, and I am a senior Consultant and Technical Witness with Boulder Telecommunications Consultants, LLC. My business address is 970 11th Street, Boulder, Colorado, 80302. I am submitting this reply declaration on behalf of AT&T Corp. ("AT&T").

2. My education and relevant work experience are already a matter of record in this proceeding, as they are contained in my Declaration attached to the Comments of AT&T filed in this proceeding on October 15, 2002 ("Declaration"). My credentials also are a matter of record in the Commission's prior proceedings regarding Qwest's request for authority under Section 271, including WC Docket No. 02-148. **As** indicated in my prior declarations, I was the lead technical witness for AT&T in the section 271 workshops in Qwest's region. *In this capacity, I* have attended Qwest 271 workshop sessions and hearings, analyzed agreements that Qwest entered with competitive local exchange carriers ("CLECs"), and become familiar with Qwest's SGAT and its development.

3. Qwest continuously has asserted that it has made all of its currently effective interconnection agreements in the nine states covered by its present Section 271 application available for review by the Commission and CLECs by posting those previously unfiled secret deals on its Internet website. As I indicated in my Declaration, my review of the secret deals that Qwest had posted on its website confirmed that Qwest had not posted all of the requisite agreements. Specifically, Qwest's website contained twenty-six separate interconnection agreements. By contrast, Qwest's filings and the investigations into Qwest's secret deals by commissions in Arizona, Iowa and Minnesota confirmed that more than 100 separate arrangements between Qwest and various CLECs were available for review publicly or under confidential seal. I determined that most of the arrangements are interconnection agreements that relate to the states in Qwest's pending Section 271 application. In order to assist the Commission, I submitted a matrix that identified and catalogued approximately forty-five Qwest agreements, demonstrating the extent to which Qwest had engaged, and continued to engage, in unlawful discrimination.

4. Qwest has continued to refuse to acknowledge, much less sufficiently mitigate, the extent and continuing damage caused by its discriminatory practice of entering secret deals. In my reply testimony, through the use of a responsive matrix that addresses Qwest's reply, I demonstrate that Qwest has not placed on its website, much less publicly disclosed, all of the secret interconnection agreements that are currently in effect in the states for which Qwest is seeking Section 271 approval. Through the use of the responsive matrix, I also demonstrate the pervasive nature of Qwest's practice and the continuing discriminatory effect of the secret deals that it claims were terminated after their discovery.

5. In compiling this responsive matrix, I have again used documents from the Minnesota proceeding on unfilled agreements, the Iowa proceeding on unfilled agreements, the Colorado proceeding on unfilled agreements, and the Arizona proceeding on unfilled agreements. I also utilized agreements that Qwest filed on its website, and the discussion provided in the declaration and responsive matrix of Larry B. Brotherson attached to Qwest's Supplemental Reply Comments filed in this proceeding on October 25, 2002.

6. The responsive matrix contains a list of 78 interconnection agreements that were not timely filed in one or more of the nine states at issue in this proceeding, but instead were kept secret for some period of time, or still remain unfilled to this day. In selecting these 78 agreements from approximately 110 agreements that have been produced before various states in Qwest's territory, I applied the FCC's definition of interconnection agreement contained in its Memorandum Opinion and Order, WC Docket No. 02-89, released on October 4, 2002. The general discussion of my method for generating the initial matrix filed with my Declaration attached to AT&T's Comments on October 15, 2002, similarly applies to this responsive matrix.

7. The responsive matrix is divided into four sections. The first section, agreements 1 - 31, contains agreements that were identified in my earlier comments and that are not contained on the Qwest website. These agreements, some of which Qwest claims to have terminated and some of which still are in effect today in one form or another, all have terms which would be of interest to CLECs operating in the relevant Qwest states. The second section, agreements 32 - 46, contains agreements that were identified in my earlier comments and that are contained on the Qwest website. These agreements, though available currently, were not available for significant periods of time, and also highlight the discriminatory effect of Qwest's effort to limit availability to certain terms in the agreements. The third section, agreements 47 -

69, contains agreements that were not identified in my earlier comments and that are not contained on the Qwest website. These agreements should have been filed pursuant to Section 252, but have terms of less relevance to the checklist issues addressed by AT&T. The fourth section, agreements 70 – 78, contains agreements that were not identified in my earlier comments and are contained on the Qwest website, but have terms that are not relevant to AT&T's allegations concerning Qwest's discriminatory and illegal conduct.

8. With respect to the designations in the responsive matrix, the first column of the matrix consists of a sequential numbering of the agreements, with a number assigned to identify each agreement. The second column contains the name of the CLEC. The third column contains the date the agreement went into effect. The fourth column contains the name of the agreement. Although the sequential order is new, these four columns repeat information in my initial matrix.

9. The fifth column shows the number of months that Qwest delayed in filing particular agreements. In calculating the time of Qwest's delay, I computed the number of months that Qwest delayed filing agreements, from the date the agreement was signed to the date it was filed in a state. Several agreements were filed in March of 2002 as a result of the Minnesota proceeding concerning unfilled agreements. If an agreement is on the Qwest website, I calculated the time from the signing of the agreement until August 2002, when the web site was created. For agreements that have not yet been put on the website or filed in a state, I used the current date for the calculation of the delay. The average number of months that Qwest delayed filing these agreements is 20 months. The total number of months of delay is 1549.

10. The last column in the matrix contains comments on the agreements. These comments generally respond to statements made by Larry B. Brotherson in his matrix entitled “Response to Matrix of Kenneth Wilson, October 22, 2002.”

11. **As** the comments in the responsive matrix demonstrate, for a number of reasons, Qwest’s disclosure of its past secret interconnection agreements is woefully insufficient to eliminate the discriminatory effect of its practice of entering secret deals. First and foremost, in his comments of October 22, 2002, Mr. Brotherson claimed that several of the agreements that I listed in my initial matrix were not interconnection agreements. The agreements that he challenged include agreements #3, #19, #22, #23, #24, and #25. I have reviewed these agreements again and still maintain that a complete review of the agreements and the facts surrounding them demonstrates that they are interconnection agreements that must be filed. I have made specific comments about each of these agreements in the responsive matrix supporting my conclusion, including indications that some of these agreements have been found to be interconnection agreements by the staff of the Arizona Corporation Commission (“ACC”) or the Administrative Law Judge in Minnesota. This discrepancy alone refutes Qwest’s claim that it has filed and placed all relevant interconnection agreements on its website.

12. Moreover, in a number of instances, Qwest has claimed that agreements that should have been filed and never were filed have been terminated. In many of these cases, Qwest has not indicated whether or with what agreement these agreements were terminated or superseded. Absent such demonstrations, Qwest’s attempt to rid itself of the consequences of its secret deals by terminating discriminatory agreements cannot bring Qwest into compliance with the checklist items that require findings of nondiscrimination. This is especially clear in cases where superseding agreements are not currently available to CLECs.

13. Furthermore, in a variety of instances, including agreements **#4, #6, #26** and #31, Qwest has not addressed all the terms that are contained in the agreements cited in the matrix. In these instances, Qwest's assertion that some of the terms are available through other agreements is not sufficient to eliminate the discriminatory effect of its practices. Additionally, the responsive matrix contains a number of instances, including agreements #11, #27, and #28, where specific CLECs had been seeking access to certain capabilities and had been rejected by Qwest, even though Qwest was providing that capability to others or had the ability to provide it.


14. Finally, with respect to many of these agreements that Qwest claims to have terminated, the comments in the matrix demonstrate that Qwest has not cured the discriminatory effect of its entry into these secret deals by their termination. Simply, had Qwest filed these agreements with the states and allowed other CLECs to pick and choose terms that were by law available during the months and years that they were extant, CLECs would not only have had the benefit of those terms during that time period, but for the duration of their own interconnection agreements with Qwest.

15. Although this reply declaration and responsive matrix seek to demonstrate that Qwest's discrimination and its effects persist today, in my previous declarations, I also have spent a significant amount of time discussing specific instances of the discriminatory impact of Qwest's practice of entering secret oral and written agreements that discriminate between CLECs. I cannot help but note again that there is no doubt in my mind, having attended over 41 Qwest 271 workshops, that if the content of these agreements had been known, the workshops would have included numerous additional issues and different outcomes. It is absolutely clear that the silence of certain CLECs purchased by Qwest, including McLeod, Eschelon and Sun West, severely restricted the ability of the state commissions to resolve issues in a manner that

would adequately ensure the opening of Qwest's local markets. This anticompetitive occurrence cannot be corrected absent further state proceedings that reflect the facts and issues that can be provided by the silenced CLECs.

VERIFICATION PAGE

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.


Kenneth L. Wilson

October 7, 2002

INTERCONNECTION AGREEMENTS NOT AVAILABLE ON THE QWEST WEB SITE WITH TERMS OF INTEREST

Agr #	Company	Date	Agreement Name	Months of filing Delay	Comments
1	Allegiance	12/24/01	Confidential Billing Settlement	12	Qwest indicates that this agreement is no longer in effect, but does not indicate which subsequent agreement has superseded this agreement. There are provisions in this agreement that Qwest does not address in its reply comments
2	Electric Light Wave	12/30/99	Confidential Billing Settlement Agreement and Release	36	Qwest does not indicate which subsequent agreement supersedes this agreement.
3	Electric Light Wave	4/27/00	Confidential Billing Settlement Agreement	32	On its face, the written agreement deals with issues that would be interesting for any facilities based CLEC. A reading of this agreement makes clear that there are terms and conditions that are contained outside of this written agreement. Although some of the terms are in settlement of previous disputes, the disputes are of a nature that would require agreements going forward. These going forward terms are not in this written agreement, and must be oral in nature or the subject of an undisclosed written agreement.
4	Electric Light Wave	6/21/00	Amendment #1 to Confidential Settlement Agreement	30	The agreement contains additional terms that Qwest has not addressed in its reply.
5	Electric Light Wave	7/19/01	Binding Letter Agreement	17	While this agreement was incorporated into the agreement with ELI on 4/26/02, as an attachment, Qwest has not addressed specific discriminatory terms contained in this agreement that are not part of the 4/26/02 agreement.
6	Electric Light Wave	4/26/02	Confidential Billing Settlement Agreement	8	This agreement contains additional discriminatory terms that Qwest has not addressed in its reply comments.
7	Eschelon	2/28/00	Confidential/Trade Secret Stipulation and Agreement	25	The ALJ in Minnesota, now upheld by the full Commission, found that five of the paragraphs in this agreement contained discriminatory provisions that should have been filed but were not.

Agmt #	Company	Date	Agreement Name	Month of filing Deadline	Comments
8	Eschelon	1/1/00	Confidential Agreement	22	The ALJ in Minnesota, now upheld by the full Commission, found that this agreement contained discriminatory provisions that should have been filed but were not. In addition, Qwest has admitted that this agreement, which expired on May 1, 2001, was extended past this date and extended for at least one year. Qwest has not provided the agreement that provided for the extension or the superseding agreement that terminated the extension.
9	Eschelon	1/15/00	Confidential Agreement	16	The ALJ in Minnesota, now upheld by the full Commission, found that several terms in this agreement contained discriminatory provisions that should have been filed but were not.
10	Eschelon	1/15/00	Confidential Amendment to Confidential Trade Secret Stipulation	16	The ALJ in Minnesota, now upheld by the full Commission, found that several terms in this agreement contained discriminatory provisions that should have been filed but were not. Significantly, the ALJ found that this agreement obligated Qwest to provide Eschelon with a 10% discount on every purchase Eschelon made or makes from Qwest between November 15, 2000 and December 31, 2005. Discounts were not available to other CLECs, except McLeod.
11	Eschelon	11/15/00	Feature Letter from Qwest	25	This agreement provided Eschelon with the ability to use AIN features with a virtual UNE-P service. AT&T has been asking Qwest to allow AT&T to use AIN features with UNE-P for the past three years. Qwest refuses to do
12	Eschelon	11/15/00	Letter from Qwest Regarding Daily Usage Information	25	Qwest should make the provisions in this agreement available to other CLECs. To do otherwise is discriminatory.
13	Eschelon	3/19/01	Confidential Second Amendment to Confidential Trade Secret Stipulation	21	Qwest should make the provisions in this agreement available to other CLECs so that all CLECs could have taken advantage of platform billing and associated access revenue. To do otherwise is discriminatory.

Agm #	Company	Date	Agreement Name	Months of filing Delay	Comments
14	Eschelon	7/3/01	Status of Switched Access Minute Reporting	17	Qwest should make the provisions in this agreement available to other CLECs so that all CLECs could have taken advantage of platform billing and the associated access revenue. To do otherwise is discriminatory.
15	Eschelon	7/31/01	Implementation Plan	11	The ALJ in Minnesota, now upheld by the full Commission, found that numerous paragraphs in this agreement contained discriminatory provisions that should have been filed but were not.
16	Eschelon	7/22/02	Settlement Agreement Letter from Qwest	10	Qwest should make the provisions in this agreement available to other CLECs so that all CLECs could have taken advantage of platform billing and the associated access revenue. To do otherwise is discriminatory.
17	Global Crossing	9/18/00	Settlement Agreement and Release	27	Paragraph 8 of this agreement contains terms that are superior to the Global Crossing agreement of 7/31/01, which is posted to the website. Although the 7/31/01 agreement refers to the 9/18/00 agreement, it is not clear that the 9/18/00 agreement has been completely superseded.
18	GST	1/7/00	Confidential Billing Dispute Settlement Agreement and Release	35	Qwest has indicated that this agreement has expired.
19	MCI WorldCom	11/30/00	Settlement Agreement	25	While some of the terms of this agreement are in settlement of previous issues, the agreement does not specify how those issues are resolved going forward. In as much as the issues would be of interest to any facilities-based CLEC, the issues raised in the agreement should be reviewed by state commissions and the FCC, with testimony from Qwest as to the resolution of the issues on a going forward basis and the potential benefit those resolutions would provide to other CLECs.
20	MCI WorldCom	12/14/00	Confidential Billing Settlement Agreement	24	Qwest has offered no proof that this agreement was filed and that its terms are available to CLECs.

Agmt #	Company	Date	Agreement Name	Months of filing Delay	Comments
21	McLeodUSA	1/25/00	Confidential Settlement Document: US West/Qwest Merger	32	Qwest has been required to file this agreement in Iowa, but has not put it on their web site. While many of the provisions appear to be similar to those in the 4/28/00 agreement, CLECs should be able to pick terms and conditions from either agreement without some prejudgment on Qwest's part.
22	McLeodUSA	9/29/00	Confidential Amendment to Confidential Billing Settlement Agreement	27	This agreement relates to Qwest's failure to provide services under UNE-P and instead providing services as resale. As a result, McLeod could not bill access charges properly and a settlement was made. While no resolution of the base issue, or terms going forward, are mentioned in the written agreement itself, some arrangement must have been made orally to do so. Other CLECs in the same predicament would have benefited from knowledge of this agreement and from whatever arrangements were made to resolve the ongoing issues.
23	McLeodUSA	10/26/00	Confidential Amendment to Confidential Billing Settlement Agreement	26	This agreement relates to Qwest's failure to provide services under UNE-P and instead providing services as resale. As a result, McLeod could not bill access charges properly and a settlement was made. While no resolution of the base issue, or terms going forward, are mentioned in the written agreement itself, some arrangement must have been made. Other CLECs in the same predicament would have benefited from knowledge of this agreement and from whatever arrangements were made to resolve the ongoing issues.

Agmt #	Company	Date	Agreement Name	Month of filing Dela	Comments
24	McLeodUSA	10/12/00	Purchase Agreement (Related to Oral Agreement)	26	This agreement is a purchase agreement with no products mentioned. It is obvious that there was an oral agreement associated with this purchase agreement. Qwest, and information made available in the Minnesota proceeding, connect this agreement to an oral discount agreement that Qwest gave to McLeod for interconnection products and services. As such, this agreement is part of an interconnection agreement that has not been fully disclosed to date. All CLECs would have been delighted to have Qwest pay them large sums in exchange for products and services that amounted to vapor ware and were in fact a ruse for discounts on all Qwest services. While Qwest has claimed that the oral agreement is moot, because it was terminated on Sept 16, 2002, no termination agreement or superceding agreement has been provided. The Arizona Staff and the Minnesota Commission determined that Qwest should have filed this agreement as an interconnection agreement.
25	McLeodUSA	12/31/01	Confidential Billing Settlement Agreement (QC)	12	This agreement was a settlement related to various Qwest performance problems. While the settlement amount is related to past performance, no written terms that specify how the performance problems will be addressed by Qwest going forward have been provided, and must be contained in an as yet undisclosed oral or written agreement between the parties.
26	NextLink	5/12/00	Confidential Billing Settlement	31	Qwest claims that this agreement is no longer in effect, but does not indicate whether a subsequent agreement has superseded this agreement. Qwest fails to discuss the terms contained in Paragraph 2 of this agreement.
27	Scindo	5/4/01	Confidential Settlement Agreement	19	Qwest claims that this agreement is no longer available to CLECs because Scindo is no longer in existence. If this contract had been filed in May of 2001, as it should have been, AT&T and other CLECs would have been able to take advantage of provisions in the agreement that had been denied to them by Qwest for several years, and to this day.

Agr #	Company	Date	Agreement Name	Months of filing Delay	Comments
28	Scindo	3/10/01	Confidential Settlement Agreement	16	Qwest claims that this agreement is no longer available to CLECs because Scindo is no longer in existence. If this contract had been filed in May of 2001, as it should have been, AT&T and other CLECs would have been able to take advantage of provisions in the agreement that had been denied to them by Qwest for several years, and to this day.
29	Small CLECs	4/18/00	Confidential Stipulation for Toll Services and OSS	26	While some terms of this agreement are available only in Minnesota, there are some terms that are not specific to Minnesota. In particular, Qwest waives the charges for T1 facilities between the companies involved in the agreement and Qwest operations centers. Similar facilities are used by other CLECs and such terms would be beneficial to them as well.
30	Time Warner Telecom of Colorado, LLC	3/14/02	Confidential Billing Settlement Agreement	10	Qwest claims that this agreement has been filed in Colorado. However, Colorado staff have not released copies of the agreement for review by other CLECs, thus precluding CLECs ability to take advantage of any provisions.
31	XO	4/17/01	Amendment to Confidential Billing Settlement Agreement	20	Qwest claims that this agreement does not reflect any ongoing terms and was superseded by the 12/31/01 Confidential Billing Settlement Agreement. The 4/17/01 agreement appears to be missing any terms that are beneficial to XO. There appears to be an oral agreement, or some other undisclosed written agreement, that must accompany this agreement. Qwest must disclose the terms that it granted to XO in exchange for XO signing this agreement.

INTERCONNECTION AGREEMENTS AVAILABLE ON THE QWEST WEB SITE WITH TERMS OF INTEREST

Agmt #	Company	Date	Agreement Name	Months of filing Delay	Comments
32	Alltel – Aliant Midwest	4/19/00	Confidential Billing Settlement Agreement	29	The Iowa and Nebraska SGATS only contain Bill and Keep provisions for ISP traffic, not for all interconnection traffic. Qwest has not indicted which agreements they filed in Iowa and Nebraska contain general provisions for including all traffic under bill and keep. Qwest may be confusing bill and keep provisions that only apply to ISP traffic with more general provisions such as those in the Alltel-Aliant Midwest agreement.
33	Covad	4/19/00	Service Level Agreement Unbundled Loop Services	26	The ALJ in Minnesota, now upheld by the full Commission, found that four of the sections in this agreement contained discriminatory provisions that should have been filed but were not. If this contract had been filed in May of 2001, as it should have been, AT&T and other CLECs would have been able to take advantage of provisions in the agreement that had been denied to them by Qwest for several years, and to this day.
34	Ernest Comm.	9/17/01	Confidential Settlement Agreement and Release	15	At the time when Qwest signed this agreement with Ernest, other companies were asking Qwest for the same terms and were not receiving them.
35	Eschelon	3/1/02	Settlement Agreement	6	This agreement gave Eschelon the right to purchase UNE-E. Qwest should <i>make</i> the provisions in this agreement available to other CLECs if desired. To do otherwise is discriminatory.
36	Fairpoint	9/4/01	Confidential Billing Settlement Agreement	12	Escalation process now available on Qwest web site
37	Global Crossing	7/13/01	Confidential Billing Settlement Agreement	14	Advantageous terms for UNE-P and EEL conversions.
38	MCI WorldCom	6/29/01	Business Escalation Agreement	15	Contains prescribed timeframes for escalation responses

Agmt #	Company	Date	Agreement Name	Months of filing Delay	Comments
39	MCI WorldCom	12/9/01	Confidential Billing Settlement Agreement	15	This is an agreement where Qwest has filed the agreement on the web, but has limited the terms available for CLECs. For example, Qwest offers to use a Relative Use Factor, but does not offer the 50% RUF given to MCI WorldCom. Qwest claims that this RUF is carrier specific. If the MCI RUF had been 47%, this statement would be believable. The bigger example is the complete neglect of favorable terms for EEL that were given to MCI. Qwest gave MCI a settlement because Qwest did not convert circuits from private line to EEL as they should have. Other CLECs may have been in the same position and should be offered a settlement as well.
40	McLeodUSA	4/28/00	Confidential Billing Settlement	26	This agreement contains another example where Qwest has filed a previously secret agreement on their web site, but not offered some of the most important terms as being available to other CLECs. This agreement offers McLeod "hill and keep" for all local and internet traffic. This provision is not included among those available to CLECs and is not available in Qwest's SGATs. The ALJ in Minnesota, now upheld by the full Commission, found that this agreement contained discriminatory provisions that should have been filed but were not.
41	McLeodUSA	5/1/00	Confidential Settlement Agreement	28	The discriminatory terms in this agreement have only been recently made available to other CLECs.
42	McLeodUSA	10/26/00	Confidential Agreement	20	The ALJ in Minnesota, now upheld by the full Commission, found that several of the paragraphs in this agreement contained discriminatory provisions that should have been filed but were not.
43	SBC	5/1/02	Letter regarding proposed settlement terms	15	This agreement provided the right to notification of amendments by other CLECs in any state with the right to pick and choose for any of such amendments. It also specified line sharing rates same as Qwest separate subsidiary.

Agmt #	Company	Date	Agreement Name	Months of filing Delay	Comments
44	SunWest Communications	5/31/01	Settlement Agreement and Mutual Release	16	Qwest entered into the settlement agreement with Sun West due to the problems Sun West was having with Qwest's provisioning of UNE loops. Sun West and its customers were experiencing long delays in getting service and disconnection of service, sometimes lasting weeks. Sun West expected that by signing this agreement that Qwest would improve its loop cutover process. It is unknown whether Qwest instituted special processes for Sun West and whether oral agreements were part of the agreement and the settlement was for Sun West to withdraw from 271 workshops and from any opposition to Qwest's petition for 271 relief.
45	SunWest Communications	1/18/02	Confidential Billing Settlement Agreement	8	Though this agreement has been filed and is on the Qwest web site, one entire provision (f) has been redacted. Qwest must reveal the terms that it made available to Sun West in this provision and make them available to other CLECs.
46	XO	12/31/01	Confidential Billing Settlement Agreement	9	Qwest claims that provision 2(c) contains only terms that were superseded by other agreements that have been filed. However, paragraph (iv) of this section grants XO "bill and keep" for all non-ISP traffic from September 1, 2001 forward. Qwest has not granted this term in its Colorado SGAT. In the SGAT bill and keep is available only for ISP traffic. Qwest must indicate which filed agreement this bill and keep provision is available in for pick and choose, or make it available in this agreement. Section (iv) is not currently available for pick and choose according to the Qwest web

Agmt #	Company	Date	Agreement Name	Months of filing Delay	Comments
47	Allegiance	12/20/99	Directory Assistance Agreement with US West DEX	36	Information Unavailable – Confidential
48	Allegiance	12/20/99	Publishing Agreement for Official Listings with DEX	36	Information Unavailable – Confidential
49	Allegiance	3/23/00	Internet Calling Name Delivery Service Agreement	33	Information Unavailable – Confidential
50	Allegiance	6/29/00	Directory Assistance Agreement with US West	30	Information Unavailable – Confidential
51	Allegiance	8/23/00	Internet Calling Name Delivery Service Agreement	28	Information Unavailable – Confidential
52	Allegiance	6/19/02	Operator Service Agreement	6	Information Unavailable – Confidential
53	Arch Communications	6/16/00	Confidential Billing Settlement Agreement	30	Information Unavailable – Confidential
54	Arch dba Paging Network	4/23/01	Confidential Billing Settlement Agreement	20	Information Unavailable – Confidential
55	Electric Light	6/19/99	Confidential Settlement Document and Release	42	Information Unavailable – Confidential.
56	Electric Light	4/30/01	Amendment #2 to Confidential Settlement Agreement	20	Information Unavailable – Confidential
57	Eschelon	10/1/00	Confidential Purchase Agreement	26	Information Unavailable – Confidential
58	Eschelon	11/15/00	Confidential Billing Settlement Agreement	25	Information Unavailable – Confidential
59	Eschelon	7/3/01	Confidential Third Amendment to Confidential Trade Secret Stipulation	8	The ALJ in Minnesota, now upheld by the full Commission, found that several of the paragraphs in this agreement contained discriminatory provisions that should have been filed but were not.
60	e-spire	6/20/01	Confidential Billing Settlement Agreement	18	Information Unavailable – Confidential

Agmt #	Company	Date	Agreement Name	Months of tiling Delay	Comments
61	McLeodUSA	10/26/00	Amendment to Confidential Billing Settlement Agreement	26	Information Unavailable – Confidential
62	McLeodUSA	12/31/01	Confidential Billing Settlement Agreement (QCC)	12	Information Unavailable – Confidential
63	Nextel	9/20/01 9/20/01	Settlement Agreement and Mutual Release	15	Information Unavailable – Confidential
64	SBC	6/1/01	Confidential Consent to Assignment & Collocation Change of Responsibility Agreement	18	Information Unavailable – Confidential
65	SBC	10/05/01	Facility Decommissioning Agreement	14	Information Unavailable – Confidential
66	Western Wireless	4/17/00	Settlement Agreement and Mutual Release	32	Information Unavailable – Confidential
67	XO	12/31/01	Confidential Billing Settlement Agreement (QCC)	12	Information Unavailable – Confidential
68	XO	12/31/01	Take or Pay Agreement	12	Information Unavailable – Confidential
69	Z-Tel	5/18/01	Memorandum of Understanding	19	Information Unavailable – Confidential

INTERCONNECTION AGREEMENTS ON THE QWEST WEB SITE WITH TERMS OF LESS INTEREST

Agmt #	Company	Date	Agreement Name	Months of filing Delay	Comments
70	Advanced TeleCom Group	1018101	Facility Decommissioning Agreement	11	
71	AT&T	12127101	Facility Decommissioning Agreement	9	
72	Covad	1/3/02	Facility Decommissioning Agreement	8	
73	DSLnet Communications	11/15/01	Facility Decommissioning Agreement	10	
74	Hickory Tech	10/3/01	Facility Decommissioning Agreement	11	
75	Integra Telecom	11120101	Facility Decommissioning Agreement	10	
76	MCI WorldCom	12127101	Agreement		
77	McLeodUSA	12/20/01	Facility Decommissioning Agreement	9	

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 96A-287T

IN THE MATTER OF THE PETITION OF MFS COMMUNICATIONS COMPANY, INC ,
FOR ARBITRATION PURSUANT TO 47 U.S.C. § 252(B) OF INTERCONNECTION
RATES, TERMS AND CONDITIONS WITH U S WEST COMMUNICATIONS, INC.

DOCKET NO. 97T-507

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U.S. WEST COMMUNICATIONS, INC. AND GLOBAL CROSSING LOCAL
SERVICES, INC. F/K/A FRONTIER LOCAL SERVICES, INC.

DOCKET NO. 98T-042

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U.S. WEST COMMUNICATIONS, INC. AND NEXTLINK COLORADO,
L.L.C.

DOCKET NO. 98T-519

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U S WEST COMMUNICATIONS, INC. AND ADVANCED TELECOM
GROUP, INC.

DOCKET NO. 99T-040

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U.S. WEST COMMUNICATIONS, INC. AND ERNEST
COMMUNICATIONS, INC.

DOCKET NO. 99T-067

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U.S. WEST COMMUNICATIONS, INC. AND DIECA COMMUNICATIONS,
INC. D/B/A COVAD COMMUNICATIONS COMPANY.

DOCKET NO. 99T-598

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U S WEST COMMUNICATIONS, INC. AND KINGS DEER TELEPHONE
COMPANY, INC.

DOCKET NO. 00T-064

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U.S. WEST COMMUNICATIONS, INC. AND ELECTRO-TEL, INC.

DOCKET NO. 00T-277

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U.S. WEST COMMUNICATIONS, INC. AND SOUTHERN BELL
TELECOM, INC.

DOCKET NO. 01T-013

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U.S. WEST COMMUNICATIONS, INC. AND TIME WARNER TELECOM
OF COLORADO, L.L.C.

DOCKET NO. 01T-019

THE APPLICATION FOR APPROVAL OF INTERCONNECTION AGREEMENT
BETWEEN U S WEST COMMUNICATIONS, INC AND MCLEOD USA
TELECOMMUNICATIONS SERVICES, INC

STAFF'S PHASE II REPLY COMMENTS

Staff of the Colorado Public Utilities Commission ("Staff"), pursuant to Decision No C02-1183 ("Order"), submits its Phase II reply comments regarding whether the interconnection agreements ("ICAs") filed in the above captioned dockets should be approved or rejected by the Colorado Public Utilities Commission ("Commission").

Consistent with Staffs Phase II Initial Comments ("Staffs initial comments"), incorporated by reference, Staff believes the Commission should reject the filed agreements. Approval at this time creates a number of problems which the Commission should seek to avoid. First, approval at this time appears to be an explicit endorsement of potential improprieties, the full extent of which remains unknown.

Further, approval without further analysis ignores the need to fully examine all aspects of the agreements in their entirety and to develop appropriate remedies, both backward and forward-looking. For the reasons fully set forth in Staff's initial comments, approval of the agreements at this time is discriminatory and not consistent with the public interest, convenience and necessity. The agreements should be rejected due to the need for further analysis, and each should be transferred into Commission Docket No. 02I-572T.

COMMENTS

One of the most far reaching provisions in the Telecommunications Act of 1996 ("the Act") is the "pick-and-choose" provision set forth in Section 252(i) of the Act. The "pick-and-choose" provision is broad, powerful and clear. If bilateral negotiations between an incumbent local exchange carrier ("ILEC") and a competitive local exchange carrier ("CLEC") establish a term, condition, or price for services or elements, those same terms *must* then be made available to all. The Act did not make disclosure and choice optional. Instead, the Act *requires* disclosure and choice.

As contemplated by the Act and the Commission's Rules, bilateral agreements must be timely filed for approval with the Commission, which must then approve the agreements in order for the rates, terms and conditions contained in the agreement to become operative. State commission approval is mandatory. Modification and amendments to ICAs, including discontinuation, are subject to the same approval process. Approval of the agreements now, as if they were timely, ignores the disregard both parties to each agreement have demonstrated to the law and to the authority of this Commission.

The core of Staffs concern is the disregard noted above. **As** set forth in Section 252(a)(1) of the Act, the approval process for an ICA is as follows:

Upon receiving a request for interconnection, services, or network elements pursuant to section 251, an incumbent local exchange carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier or carriers without regard to the standards set forth in subsections (b) and (c) of section 251. The agreement shall include a detailed schedule of itemized charges for interconnection and each service or network element included in the agreement. The agreement, including any agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State commission under subsection (e) of this section.

Rule 5.2, 4 CCR 723-44, requires that a copy of the *entire* agreement, including any attachments, be submitted to the Commission. The processes contemplated by the Act and the Commission's Rules did not occur in the eleven dockets in which agreements were filed. Thus, the services were provided illegally, both by Qwest Corporation ("Qwest") and the respective CLECs.

In Staffs initial comments, the criteria by which the Commission may reject a filed ICA pursuant to Section 252(e)(2) of the Act and Commission Rule 5.7.2 are identified. The Commission may reject an ICA on the grounds that it discriminates against a telecommunications carrier not a party to the agreement; that the agreement is not consistent with the public interest, convenience, and necessity; or, that the agreement is not in compliance with intrastate telecommunications **service** quality standards or requirements. Without additional information and investigation, the Commission cannot approve the

agreements, as filed, since both the agreements and the lack of proper process are not consistent with the public interest, convenience, and necessity.

Based on the above discussion, the Commission should reject Qwest's recommendation that the Commission approve the bracketed portions of the filed agreements. Because the Commission does not have all the information relating to each agreement that it needs to determine whether the individual agreements should be approved or rejected, it should not approve only limited aspects of the agreements. Similarly, the Commission should reject Qwest's recommended treatment of so-called "backward looking consideration" as being a too narrow interpretation of the Commission's provisional definition.

AT&T Communications of the Mountain States, Inc. ("AT&T") recommends that all of the agreements filed thus far be approved by the Commission and made subject to the "pick and choose" provision of the Act. AT&T further requests that it and all Colorado CLECs be given the full measure of benefit from the contracts between McLeod, Eschelon and Qwest, including 10% discounts that McLeod and Eschelon have enjoyed. For the reasons already expressed, Staff recommends that the Commission reject AT&T's recommendations and requests. Until the full measure of all the agreements are known and understood, the Commission should not approve any agreement, in part or in whole.

There are additional reasons for the Commission to reject the agreements. First, some filed agreements are incomplete insofar as they reference a term or condition specified in another unfiled agreement, and thus are incomplete. Similarly, some filed agreements continue or discontinue previous unfiled agreements, the contents of which remain unknown

at this time. Some agreements demonstrate the creation and sale of elements to certain parties but not others, which appears to be discriminatory, anti-competitive, violative of the letter and spirit of the Act, and, arguably contrary to section 271 approval.

Further, the mixture of monetary compensation set forth in some agreements as a discount for elements appears to violate the “pick-and-choose” provision of the Act, and also appears to be anti-competitive in its effect of silencing potential evidence concerning the openness of the local exchange market to competition.

The depiction of an agreement as an ICA but which involves “settlement” of an undocumented “billing dispute” whereby Qwest pays a CLEC a sum of money identified as a discount for elements or services as “resolution” of a dispute is also problematic. Under the “pick-and-choose” provision and prior to actual elements or payments being delivered, those same “prices” should have been submitted for approval, and therefore available to other telecommunications carriers. And, to the extent that any agreements involve reciprocal payment of consulting fees or reciprocal purchases of services, under “pick-and-choose,” those same terms should also have been made available to others.

These agreements were filed by Qwest pursuant to Section 252(e)(4) of the Act and Commission Rule 4 CCR 723-44. The process contemplated in these dockets is inadequate to address the full range of issues raised. For example, a significant problem facing the Commission is how to cure the inequities created during the period of illegal operation of the agreements. Approval of the agreements, at this time, would preclude such consideration. If the Commission approves these agreements after a more thorough investigation, in order to sort the full effects of these agreements, the Commission may consider some adjustments to

the SGAT, both in terms of prices and terms and conditions listed therein. The Commission may also consider the need to modify the anti-backsliding measures currently in place. It may also examine Qwest and CLEC revenues associated with the agreements and, among the various remedies available, consider the appropriateness of refunds and penalties.

CONCLUSION

The above considerations become moot if the Commission approves these agreements. A complete examination of these issues is beyond the scope of this docket. For the reasons stated fully above as well as in Staff's initial comments, Staff recommends that the Commission reject the filed agreements. Each agreement, as filed, poses more questions than can be answered here and requires further, in depth investigation. Staff recommends that the Commission reject the agreements and order the agreements to be further examined in the investigatory docket, Docket No. 021-572T

Respectfully submitted this 5th day of November 2002

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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THAT I HAVE DULY SERVED THE WITHIN STAFF'S PHASE II
REPLY COMMENTS UPON ALL PARTIES HEREIN BY DEPOSITING COPIES OF SAME IN THE
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